

DISTRICT JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE KAREN L. STROMBOM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MATTHEW G. SILVA,

Plaintiff,

v.

ROB MCKENNA, et al.,

Defendants.

NO. C12-5924-BHS-KLS

DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
JURY DEMAND

COME NOW Defendants Robert M. McKenna, Tim Lang, Douglas Carr, Andrea Vingo, Dawn Thompson, and Lori Scamahorn, by and through their attorneys, ROBERT M. MCKENNA, Attorney General, and JOHN C. DITTMAN, Assistant Attorney General, and submit the following answer and affirmative defenses to Plaintiff's Civil Rights Complaint dated June 4, 2012.

ANSWER

I. JURISDICTION, PARTIES AND VENUE

Paragraph 1.1 Defendants admit that this Court has jurisdiction in this matter.

Paragraph 1.2 Defendants admit that Plaintiff was an inmate at the Coyote Ridge Corrections Center and has been transferred on more than one occasion.

Paragraph 1.3 Defendants admit that Robert M. McKenna is the Attorney General of Washington State. Defendants neither admit nor deny the remainder of the allegation

1 contained in Section II, Paragraph 1.3, of Plaintiff's Complaint as it calls for a legal
2 conclusion.

3 Paragraph 1.4 Defendants admit that Tim Lang is a Senior Assistant Attorney
4 General with the Corrections Division of the Attorney General's Office and has supervisory
5 authority over Defendants Carr and Vingo.

6 Paragraph 1.5 Defendants admit that Douglas Carr is an Assistant Attorney General
7 with the Corrections Division of the Attorney General's Office.

8 Paragraph 1.6 Defendants admit that Andrea Vingo is an Assistant Attorney General
9 with the Corrections Division of the Attorney General's Office.

10 Paragraph 1.7 Defendants deny that Dawn Thompson is the Inmate Trust Account
11 Manager and responsible for inmate accounts.

12 Paragraph 1.8 Defendants admit that Lori Scamahorn is a Grievance Coordinator at
13 the Washington State Penitentiary.

14 Paragraph 1.9 Defendants are without sufficient knowledge or information to form a
15 belief as to the accuracy of Plaintiff's claim and therefore deny this allegation.

16 **II. OPERATIVE FACTS**

17 Paragraph 2.1 Defendants admit the factual allegations contained in Section II,
18 Paragraph 2.1 of Plaintiff's Complaint.

19 Paragraph 2.2 Defendants admit the factual allegations contained in Section II,
20 Paragraph 2.2 of Plaintiff's Complaint.

21 Paragraph 2.3 Defendants deny the factual allegations contained in Section II,
22 Paragraph 2.3 of Plaintiff's Complaint.

23 Paragraph 2.4 Defendants admit that at all times material to Plaintiff's complaint,
24 Defendants Lang, Carr, and Vingo were aware that Plaintiff was pursuing grievances and
25 litigation. Defendants admit that Defendants Thompson and Scamahorn were aware that
26

1 Plaintiff had pursued grievances and litigation. Defendants admit that Defendant McKenna
2 was aware that Plaintiff has pursued litigation.

3 Paragraph 2.5 Defendants deny the factual allegations contained in Section II,
4 Paragraph 2.5 of Plaintiff's Complaint.

5 Paragraph 2.6 Defendants deny the factual allegations contained in Section II,
6 Paragraph 2.6 of Plaintiff's Complaint.

7 Paragraph 2.7 Defendants deny the factual allegations contained in Section II,
8 Paragraph 2.7 of Plaintiff's Complaint.

9 Paragraph 2.8 Defendants admit that judgments were entered.

10 Paragraph 2.9 Defendants deny the factual allegations contained in Section II,
11 Paragraph 2.9 of Plaintiff's Complaint.

12 Paragraph 2.10 Defendants deny the factual allegations contained in Section II,
13 Paragraph 2.10 of Plaintiff's Complaint.

14 Paragraph 2.11 Defendants deny the factual allegations contained in Section II,
15 Paragraph 2.11 of Plaintiff's Complaint.

16 Paragraph 2.12 Defendants neither admit nor deny the allegation contained in Section
17 II, Paragraph 2.12, of Plaintiff's Complaint as it calls for a legal conclusion.

18 Paragraph 2.13 Defendants deny the factual allegations contained in Section II,
19 Paragraph 2.13 of Plaintiff's Complaint.

20 Paragraph 2.14 Defendants deny the factual allegations contained in Section II,
21 Paragraph 2.14 of Plaintiff's Complaint.

22 Paragraph 2.15 Defendants deny the factual allegations contained in Section II,
23 Paragraph 2.15 of Plaintiff's Complaint.

24 Paragraph 2.16 Defendants deny the factual allegations contained in Section II,
25 Paragraph 2.16 of Plaintiff's Complaint.
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1 Paragraph 2.17 Defendants deny the factual allegations contained in Section II,
2 Paragraph 2.17 of Plaintiff's Complaint.

3 Paragraph 2.18 Defendants are without sufficient knowledge or information to form a
4 belief as to the accuracy of Plaintiff's claim and therefore deny same.

5 Paragraph 2.19 Defendants deny the factual allegations contained in Section II,
6 Paragraph 2.19 of Plaintiff's Complaint.

7 Paragraph 2.20 Defendants deny the factual allegations contained in Section II,
8 Paragraph 2.20 of Plaintiff's Complaint.

9 Paragraph 2.21 Defendants admit that Plaintiff complained concerning the handling
10 of the funds.

11 Paragraph 2.22 Defendants deny the factual allegations contained in Section II,
12 Paragraph 2.22 of Plaintiff's Complaint.

13 Paragraph 2.23 Defendants deny the factual allegations contained in Section II,
14 Paragraph 2.23 of Plaintiff's Complaint.

15 Paragraph 2.24 Defendants deny the factual allegations contained in Section II,
16 Paragraph 2.24 of Plaintiff's Complaint.

17 Paragraph 2.25 Defendants deny the factual allegations contained in Section II,
18 Paragraph 2.25 of Plaintiff's Complaint.

19 Paragraph 2.26 Defendants deny the factual allegations contained in Section II,
20 Paragraph 2.26 of Plaintiff's Complaint.

21 Paragraph 2.27 Defendants deny the factual allegations contained in Section II,
22 Paragraph 2.27 of Plaintiff's Complaint.

23 Paragraph 2.28 Defendants are without sufficient knowledge or information to form a
24 belief as to the accuracy of Plaintiff's claim and therefore deny the same.

25 Paragraph 2.29 Defendants deny the factual allegations contained in Section II,
26 Paragraph 2.29 of Plaintiff's Complaint.

1 **III. CAUSES OF ACTION**

2 Count One - Conversion

3 Paragraph 3.1 Defendants deny the factual allegations contained in Section III,
4 Paragraph 3.1 of Plaintiff's Complaint.

5 Count Two - Negligence

6 Paragraph 3.2 Defendants deny the factual allegations contained in Section III,
7 Paragraph 3.2 of Plaintiff's Complaint.

8 Count Three - Retaliation

9 Paragraph 3.3 Defendants deny the factual allegations contained in Section III,
10 Paragraph 3.3 of Plaintiff's Complaint.

11 Count Four – Equal Protection

12 Paragraph 3.4 Defendants deny the factual allegations contained in Section III,
13 Paragraph 3.4 of Plaintiff's Complaint.

14 Count Five – Freedom Of Religion

15 Paragraph 3.5 Defendants deny the factual allegations contained in Section III,
16 Paragraph 3.5 of Plaintiff's Complaint.

17 **IV. REQUESTS FOR RELIEF**

18 Defendants deny that Plaintiff is entitled to any or all of the relief he seeks.

19
20 **ALLEGATIONS NOT EXPRESSLY ADMITTED ARE DENIED**

21 Defendants deny any and all allegations set forth in Plaintiff's Complaint that
22 Defendants do not expressly admit above.

23 **AFFIRMATIVE DEFENSES**

24 **1. IMMUNITY**

25 All Defendants are entitled to immunity/qualified immunity from Plaintiff's damage
26 claims.

1 **2. FAILURE TO STATE A CLAIM**

2 Plaintiff has failed to state a claim upon which relief may be granted.

3 **3. STATUTE OF LIMITATIONS**

4 Plaintiff's claims are barred in whole or part by the Statute of Limitations.

5 **4. SETOFF**

6 Defendants are entitled to an offset from any awards to Plaintiff herein and/or recovery
7 of back monies paid to or owed by Plaintiff.

8 **5. MITIGATION/COMPARATIVE FAULT**

9 If the Plaintiff suffered any damages, recovery therefor is barred by Plaintiff's failure to
10 mitigate said damages or these damages were proximately caused or contributed to by the fault
11 of Plaintiff.

12
13 Defendants reserve the right to conduct further discovery and amend their answers to
14 include new additional defenses disclosed during the course of the same.

15
16 WHEREFORE, having fully answered the Complaint of Plaintiff and having stated
17 affirmative defenses, the Defendants pray for judgment dismissing the Complaint and action
18 with prejudice, directing that the Plaintiff take nothing thereby, and awarding Defendants costs
19 and reasonable attorney's fees herein.

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JURY DEMAND

Should this matter proceed to trial, Defendants demand that all issues of fact be determined by a jury.

RESPECTFULLY SUBMITTED this 25th day of October, 2012.

ROBERT M. MCKENNA
Attorney General

s/ John C. Dittman
JOHN C. DITTMAN, WSBA #32094
Assistant Attorney General
JohnD2@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

MATTHEW G. SILVA DOC #957176
WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA WA 99362

EXECUTED this 25th day of October, 2012, at Olympia, Washington.

s/ Judy Lonborg
JUDY LONBORG
Legal Assistant